



76-SBE-083

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN W. AND VERA JO BANKS)

Appearances:

For Appellants: John W. Banks, in pro. per.
For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John W. and Verna Jo Banks against a proposed assessment of additional personal income tax in the amount of \$426.76 for the year 1972.

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John W. Banks, hereinafter referred to as appellant, is employed by the State of California as an education project specialist. He and his wife claimed a number of deductions for business expenses and charitable contributions on their joint California personal income tax return, for the year in question. Respondent audited the return and, among other adjustments, reduced or disallowed many, of the claimed deductions because they had not been substantiated. Appellant agreed to some of the adjustments, but the following items remain in issue:.

(1) A deduction for **noncash** charitable contributions: (2) a deduction for away-from-home traveling expenses and automobile expenses; and (3) a deduction for other traveling expenses.

(1) Charitable contributions

Appellant donated a large amount of personal-property to Goodwill and to a **neighborhood church** during the year in question. The donated articles included **nine persian** or **arabian** rugs, seven rug pads, three tape recorders, a freezer, a television set, a typewriter, some furniture, numerous boxes of clothing and several other items. Appellant estimated the fair market value of this property to be \$1,400 as of the dates of the donations, and claimed that amount as a deduction on his return. Respondent reduced the claimed deduction by an arbitrary figure on the ground that appellant had failed to prove his estimate of the property's value. Appellant has submitted documentary evidence to this board, however, which indicates to our satisfaction that the value of the donated property was at least \$1,000. We therefore hold that he is entitled to a charitable deduction in that amount. (Rev. & Tax. Code, § 17214.)

(2) Away-from-home traveling expenses and automobile expenses

During the year in question appellant traveled extensively throughout California in connection with his state employment. The state **partially** reimbursed him for the expense of these trips. Appellant says that he also traveled around the state conducting personal "investment business" and attempting to collect a bad debt. In addition, both appellant and his wife drove to various places to take part in career guidance conferences helping black students find suitable employment.

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Appellant claimed a \$4,615 deduction for the cost of these trips. The deduction was composed of: unreimbursed expenses of \$550 for meals and lodging incurred by appellant while traveling on state business; expenses of \$2,915 for operating appellant's automobile, a 1972 Oldsmobile; and expenses of \$1,140 for operating Mrs. Banks' automobile, a Toyota. Respondent disallowed the entire amount for lack of substantiation.

It is well settled that the taxpayer bears the burden of proving he is entitled to claimed deductions. (Welch v. Helvering, 290 U.S. 111 [78 L. Ed. 212].) In the case of a deduction for traveling expenses, the taxpayer must show the purpose, date, place and amount of the expenditures. (Appeal of Oilwell Materials & Hardware Co., Inc., Cal. St. Bd. of Equal., Nov. 6, 1970.) Moreover; Revenue and Taxation Code section 17296 provides that:

No deduction shall be allowed under Section 17202 or 17252, for any traveling or entertainment expenses unless substantiated by adequate records or by sufficient evidence which corroborates the taxpayer's own statement.

After the oral hearing in this matter, appellant submitted documentary evidence showing that he incurred at least \$550 in unreimbursed expenses for meals and lodging while away from home on state business. Accordingly, he is entitled to a business expense deduction in that amount. (Rev. & Tax. Code, § 17202, subd. (a)(2).)

Appellant also produced mileage logs for the Oldsmobile and the Toyota. The logs indicate that each automobile was driven to various locations and show the approximate mileage of each journey, but do not reveal the purpose of the trips. Appellant alleges that the mileage on the Oldsmobile represents travel in connection with his state employment, travel for private business purposes, and apparently some travel for charitable or educational purposes. He claims that the Toyota was used by his wife to drive to and from charitable projects. For the reasons enumerated below, however, we find that appellant has not met his burden of proving that he is entitled to the claimed automobile expenses.

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Appellant was reimbursed by the state at the rate of 12 cents per mile for the use of his Oldsmobile on state business. These reimbursements were not included in his gross income. He has introduced no documentary evidence to prove that actual expenditures exceeded the reimbursements, and is therefore not entitled to a deduction for automobile expenses incurred while traveling on state business. (Tidwell v. Commissioner, 298 F.2d 864; see also Ralph E. Schumaker, T.C. Memo., Oct. 5, 1970.) With respect to the mileage for private business trips, appellant states that he used his car while doing "investment business" and attempting to collect a bad debt. The record contains no evidence to corroborate these statements, however. Absent such corroboration, we must conclude that appellant has failed to prove any private business usage of the Oldsmobile. (Bernard Goss, 59 T.C. 594; Edward D. Harper, Jr., T.C. Memo., Nov. 23, 1971.)

Finally, travel expenses incurred while rendering charitable services may be deducted only if the services were donated to an organization to which contributions would be deductible. (Cal. Admin. Code, tit. 18, reg. 17215, subd. (b).) Appellant states that the mileage on the Toyota, and apparently some of the mileage on the Oldsmobile, was accumulated in traveling to and from charitable projects. The record, however, does not reveal any details concerning the organization which sponsored these projects, and we are therefore unable to determine whether it was a qualified charitable organization. Accordingly, appellant has failed to prove that the auto expenses incidental to his or his wife's charitable work are deductible. (Richard L. Feldman, T.C. Memo., April 27, 1967.)

For the above reasons, we conclude that appellant is entitled to \$550 of the claimed \$4,615 deduction.

(3) Other traveling expenses

Appellant owns a farm in Arkansas. He alleges that he flew to Arkansas twice during the year in question in order to visit this farm. He also states that he went to Hawaii for two weeks to attend a seminar. Appellant claimed a \$1,200 deduction for the cost of these trips, of which respondent allowed \$216.

Appellant has offered no evidence to this board, other than his own testimony, to prove his right to this deduction. He claims only that he submitted credit-card receipts to respondent's auditor which the auditor failed

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to return to him. The auditor denies having kept any such receipts. In any event, the fact remains that appellant bears the burden of producing adequate evidence to substantiate the claimed expenditures. (Rev. & Tax. Code, § 17296.) We do not believe this burden can be satisfied by mere assertions that corroborative documents, now misplaced, have already been shown to respondent. (Cf. Appeal of Clyde L. and Josephine Chadwick, Cal. St. Bd. of Equal., Feb. 15, 1972.) Accordingly, appellant has failed to establish that he is entitled to a deduction larger than that already allowed by respondent.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS IIEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John W. and Verna Jo Banks against a proposed assessment of additional personal income tax in the amount of \$426.76 for the year 1972, be and the same is hereby modified to reflect allowance of a \$1,000 charitable contribution deduction and a \$550 deduction for away-from-home travel expenses. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of October, 1976, by the State Board of Equalization.

William B. Brown, Chairman
John H. Brown, Member
Philip H. Brown, Member
_____, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary